

W. SPEAKMAN
J. ANTRIM

IBLA 80-74

Decided December 15, 1980

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims null and void. CA MC 32189 and CA MC 32190.

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations:
Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: W. Speakman and J. Antrim, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GOSS

W. Speakman and J. Antrim have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated October 2, 1979, declaring their AS I and AS II placer mining claims null and void because they were located on land withdrawn "from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws." The withdrawal was pursuant to Public Land Order (PLO) No. 548, 14 FR 482 (1949), for use by the Department of the Army for flood control purposes, in connection with construction of the Isabella Reservoir and Dam Site Project on the Kern River. In 1979 the mining claims were located in the NW 1/4 SE 1/4 and the SW 1/4 NE 1/4 sec. 18, T. 26 S., R. 33 E., Mount Diablo meridian, Kern County, California.

[1] It is well established that mining claims located on land previously withdrawn from appropriation under the mining laws are null and void ab initio. Conrad F. Sovik, 45 IBLA 14 (1980); United States v. Consolidated Mining and Smelting Co., 35 IBLA 349 (1978).

In their statement of reasons for appeal, appellants contend that the withdrawn land within which their mining claims were located is "not being used for any purpose associated with [the] Lake Isabella Reservoir at the present time and is well outside the lake's high water line, approximately 3/4 of a mile." Furthermore, they argue, the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), permits mining in power site withdrawals.

The Mining Claims Rights Restoration Act of 1955, supra, permits mining in power development and power site withdrawal areas but also provides that "nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development." PLO 548 was in furtherance of the Act of December 22, 1944, 58 Stat. 887, 901, and was issued for flood control purposes. It does not withdraw the land for power development or power site purposes and is thus not within the scope of the Mining Claims Rights Restoration Act of 1955, supra.

BLM properly declared appellant's mining claims null and void. Conrad F. Sovik, supra. The Board has no authority to modify or revoke the withdrawal order.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

